



Date: **April 21, 1999**

Case No. 1997-INA-560

In the Matter of:

PARSONS MAIN, INC.

Employer,

On behalf of:

ALBERTO ORENGO

Alien.

Certifying Officer: Raimundo A. Lopez
Boston, MA

Appearance: Elizabeth A. Ziemba, Esq.

Before: Lawson, Neusner and Vittone
Administrative Law Judges

JAMES W. LAWSON
Administrative Law Judge

DECISION AND ORDER

This case arose from a labor certification application filed on behalf of the alien by the employer under §212(a)(5)(A) of the Immigration and Nationality Act, as amended, 8 U.S.C. §1182(a)(5)(A) (the Act) and the regulations promulgated thereunder, 20 CFR Part 656.¹ After the Certifying Officer (CO) of the U.S. Department of Labor (DOL) issued a Final Determination

¹The following decision is based on the record upon which the CO denied certification, including the Notice of Findings (NOF), rebuttal and the Employer's request for review, as contained in an Appeal File (AF), and any written argument of the parties. 20 CFR § 656.27(c).

(FD) denying the application, the Employer requested review pursuant to 20 CFR § 656.26.²

Under § 212(a)(5) of the Act, an alien seeking to enter the United States for the purpose of performing skilled or unskilled labor may receive a visa if the Secretary of Labor has determined and certified to the Secretary of State and to the Attorney General that (1) there are not sufficient workers who are able, willing, qualified, and available at the time of the application and at the place where the alien is to perform such labor; and (2) the employment of the alien will not adversely affect the wages and working conditions of the U. S. workers similarly employed at that time and place. Employers desiring to employ an alien on a permanent basis must demonstrate that the requirements of 20 CFR, Part 656 have been met. These requirements include the responsibility of the Employer to recruit U.S. workers at the prevailing wage and under prevailing working conditions through the public employment service and by other reasonable means in order to make a good faith test of U.S. worker availability.

THE PROCEEDINGS

Employer seeks to fill the position of Senior Technical Consultant with DOT Title Senior Technical Consultant, DOT # 189.167-030, a wage offer of \$75,000 per year, job duties of:

Senior technical position for international engineering and construction corporation. Oversee the design and construction of power generation and transmission plants for public power utility projects including thermal power plants, high voltage transmission and distribution systems for international projects. Director power system planning, cost evaluation, electric power system studies, equipment specification, bid evaluation, construction supervision and commissioning of generation and transmission projects. Assumes full technical, contractual and financial responsibility for multimillion dollar projects. Carry out technical and contractual negotiations with suppliers. Prepare, present and discuss special reports for US and international government representatives. (AF 96)

and job requirements of a B.S. degree in Engineering/Electrical and ten years of experience in the related occupation as a Chief Electrical Engineer or a Master of Science degree in Electrical Engineering and eight years of experience as a Chief Electrical Engineer. (AF 96)

Other special requirements included:

Thorough knowledge of design and construction of hydroelectric and thermal power plants, transmission lines, dams, switch yards, & substations. Experience

²Administrative notice is taken of the Dictionary of Occupational Titles, (DOT) published by the Employment and Training Administration of the U. S. Department of Labor.

in multicultural arena including international contract negotiation of multimillion dollar contracts with government and financing groups in developing countries. Certain projects may require security clearance. (AF 96)

The application was denied by the CO on the basis that the employer's listed "special requirements" were unduly restrictive and that the employer had failed to prove that in the past it has hired senior technical consultants who possessed the same knowledge and skills required for the current job opening. (AF 5-6)

CONTENTIONS ON APPEAL

On appeal, employer contends, among other things, that the job opportunity is being described without unduly restrictive requirements and that the listed requirements apply to all employees of the company. (AF 1) In addition, employer contends that it has submitted substantial documentation proving the business necessity for exceeding the experience requirement normally permitted for the advertised position. (AF 3) In the NOF, employer was instructed to submit the names of individuals hired in the past three years, along with a copy of their job descriptions and qualifications prior to hire. (AF 26) Employer maintains that it complied with the CO's instructions by submitting two resumes that clearly demonstrated that the individuals hired had the requisite education and experience of all Senior Technical Consultants. (AF 2) Although the company employs seven Senior Technical Consultants, the two resumes submitted were of those hired within the past three years. (AF 2) Consequently, employer questions the relevancy of providing resumes and job descriptions since the company has undergone three reorganizations and positions within the company have changed several times. (AF 2) Finally, Employer argues that the two resumes and job descriptions submitted are irrelevant with respect to the special requirements for the current job opening because the position is within a different division of the company. (AF 3)

DISCUSSION

The case will be remanded for reconsideration and further development of the record.

The NOF required documentation that employer hired only Senior Technical Consultants (STCs) with the same background and skills by providing the "names of the individuals hired in the past three years, along with a copy of their job descriptions and qualifications prior to hire." (AF 26, 5). Employer responded by providing the names and resumes of two individuals, Fletcher and Marr. (AF 5, 16-22) Employer also provided an Employee Roster Report listing the 7 STCs then employed indicating that each substantially exceeded the education and experience requirement at their hire date. (AF 15) Employer made a detailed statement as to the business necessity of the minimum requirements, including education and experience, which must be met by all STCs (AF 9-10) and the other special requirements inherent in the job offer. (AF 10-11) It produced a company brochure indicating its minimum requirements for STCs are a B.S. and 10-15 years experience, or without such a degree 15-22 years experience. (AF 91) There are over

1000 Parsons' engineers who are screened and hired according to the education and experience classifications appearing in the brochure. (AF 31, 91-91)

The FD discounted the rebuttal for not having provided the resumes of the other 5 employees hired more than 3 years earlier, although not requested in the NOF; not providing copies of job descriptions pursuant to the request for "job descriptions and resumes prior to hire", although this request, if interpreted as the job descriptions of the employees in their prior positions, would seem to have been fulfilled by supplying their resumes which contain such descriptions; for not providing a legible copy of Fletcher's resume that appears to be a copy of a faxed carbon copy, which is marginally legible, without having requested a more readily readable copy; and for not making clear where Marr obtained knowledge of the special requirements of the job offered, resulting in the conclusion that "petitioner was willing to hire senior technical consultants without the special requirements listed". (AF 6) However, the appeal contends that "Marr was not hired to work in the same division as the applicant, Alberto Orengo, so that the special requirements do not pertain to his department; rather other special requirements would be mandated for individuals such as Mr. Marr who work in the Parsons Process Group. (AF 3)³

Employer complains that

The Certifying Officer dismissed the documentation with the bare assertion that "This office is not convinced that the position should exceed the SVP estimate" without providing any further substantiation for its decision.

It does appear that employer's complaint was justified and that further consideration, analysis and discussion of the evidence was warranted. The FD's rejection of the Fletcher evidence without giving employer the opportunity to provide a more legible copy of the resume does not seem fair. Nor does it seem fair to rely upon failure to produce resumes of other employees when they were not within the 3 year period for which resumes were requested and were, in fact employed so many years before (1959, 1977, 1986, 1990 and 1989)⁴ that their employment conditions might well be irrelevant to present standards, as contended on appeal. (AF 2) The CO should address these issues on remand where it may also require employer to address the disparity set out in footnote 3 and in the employer's rejection of U.S. applicants for failure to have experience as Chief Electrical Engineer,⁵ which experience is claimed for the alien in the

³ This contention conflicts with the 6/23/97 Employee Roster Report which indicates Marr and Orengo are both in the Parsons Power Group (201), Division 987, Department 52. (AF 15)

⁴ (AF 15)

⁵ which seems to be similar to one of the other of the following:

003.167-018 ELECTRICAL ENGINEER, POWER SYSTEM (utilities) alternate titles: power engineer

Designs power system facilities and equipment and coordinates construction, operation, and

ETA 750B (AF 99), but is not, without further explanation, substantiated by the appended curriculum vitae. (AF 107-113)

Accordingly, the following order will enter.

maintenance of electric power generating, receiving, and distribution stations, transmission lines, and distribution systems and equipment: Designs and plans layout of generating plants, transmission and distribution lines, and receiving and distribution stations. Directs preparation of, or prepares drawings and specific type of equipment and materials to be used, in construction and equipment installation. Estimates labor, material, construction, and equipment costs. Inspects completed installations for conformance with design and equipment specifications and safety standards. Observes operation of installation for conformance with operational standards. Coordinates operation and maintenance activities to ensure optimum utilization of power system facilities and meet customer demands for electrical energy. May compile power rates and direct others in evaluating properties and developing utilities in new territories. May be designated according to type of engineering functions as Engineer, Design-And-Construction (utilities); Engineer, Operations-And-Maintenance (utilities).

GOE: 05.01.03 STRENGTH: L GED: R6 M6 L6 SVP: 8 DLU: 77

019.167-014 PROJECT ENGINEER (profess. & kin.) alternate titles: chief engineer

Directs, coordinates, and exercises functional authority for planning, organization, control, integration, and completion of engineering project within area of assigned responsibility: Plans and formulates engineering program and organizes project staff according to project requirements. Assigns project personnel to specific phases or aspects of project, such as technical studies, product design, preparation of specifications and technical plans, and product testing, in accordance with engineering disciplines of staff. Reviews product design for compliance with engineering principles, company standards, customer contract requirements, and related specifications. Coordinates activities concerned with technical developments, scheduling, and resolving engineering design and test problems. Directs integration of technical activities and products. Evaluates and approves design changes, specifications, and drawing releases. Controls expenditures within limitations of project budget. Prepares interim and completion project reports.

GOE: 05.01.08 STRENGTH: L GED: R5 M5 L5 SVP: 8 DLU: 87

ORDER

The Certifying Officer's denial of labor certification is hereby **REMANDED** for further action consistent with this decision.

For the Panel:

JAMES W. LAWSON
Administrative Law Judge

NOTICE OF OPPORTUNITY TO PETITION FOR REVIEW: This Decision and Order will become the final decision of the Secretary unless within twenty days from the date of service a party petitions for review by the full Board. Such review is not favored and ordinarily will not be granted except (1) when full Board consideration is necessary to secure or maintain uniformity of its decisions, or (2) when the proceeding involves a question of exceptional importance. Petitions must be filed with:

**Chief Docket Clerk
Office of Administrative Law Judges
Board of Alien Labor Certification Appeals
800 K Street, NW
Suite 400
Washington, D.C. 20001-8002**

Copies of the petition must also be served on other parties and should be accompanied by a written statement setting forth the date and manner of service. The petition shall specify the basis for requesting full Board review with supporting authority, if any, and shall not exceed five double-spaced pages. Responses, if any, shall be filed within ten days of service of the petition, and shall not exceed five double-spaced pages. Upon the granting of a petition the Board may order briefs.

